

DUE PROCESS HEARING PROCEDURES

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I. GLOSSARY OF TERMS AND ACRONYMS

A. Terms

The following terms have the definitions set forth below as used in this Due Process Hearing Procedures document.

“Accommodation” means the provisions made to allow the parties and witnesses to attend and give evidence at the due process hearing, including any necessary interpreter, equipment, or physical facilities.

“Advisor” means an individual with special knowledge or training with respect to the problems of children with disabilities.

“Expedited due process hearing request” means a request for due process involving discipline procedures as set forth in the Individuals with Disabilities Education Act.

“Hearing Officer” means the impartial due process hearing officer who conducts the initial due process hearing under the Individuals with Disabilities Education Act.

“Mediation” means an informal problem-solving process for parents and schools to resolve their differences concerning special education programs through the intervention of a neutral person knowledgeable in matters of special education.

“Parent” means the natural or adoptive parent of a child, the legal guardian of a child, a relative with whom a child resides and who is acting as the parent of that child, a person who has custody of a child, or a surrogate parent duly appointed by a court of competent jurisdiction pursuant to A.R.S. § 15-763.01.

“Public education agency” means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the State of Arizona that is responsible for providing education to children with disabilities.

“Subpoena” means a command to appear at a certain time and place to give testimony upon a certain matter. In the context of a due process hearing, a subpoena is used to compel a witness to testify at the due process hearing when that witness will not agree to testify voluntarily.

“Subpoena duces tecum” means a command to produce documents or papers that are in a person’s possession or control. In the context of a due process hearing, a subpoena duces tecum would be requested when a party is seeking copies of documents from a non-party who is not willing to provide copies of such documents voluntarily.

B. Acronyms

The following acronyms are used in this Due Process Hearings Procedures document.

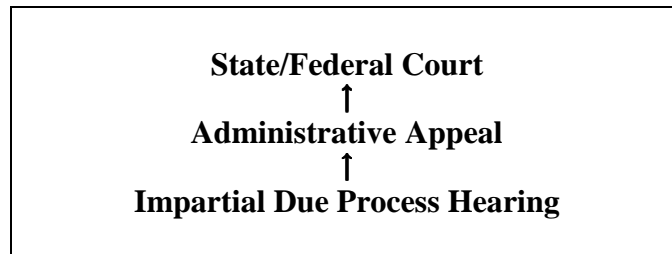
A.A.C.	Arizona Administrative Code
A.R.S.	Arizona Revised Statutes
ADE/ESS	Arizona Department of Education/Exceptional Student Services
C.F.R.	Code of Federal Regulations
IDEA '97	Individuals with Disabilities Education Act Amendments of 1997
SEA	State Educational Agency
U.S.C.	United States Code

II. OVERVIEW

The Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97) requires that states provide as part of its state eligibility documentation, a due process hearing system to address disputes between a parent and the public education agency. A parent or public education agency may request a due process hearing regarding the identification, evaluation, placement, or the provision of a free appropriate public education (FAPE) of a student with a disability. (See 34 C.F.R. § 300.507)

Arizona has chosen to have a two-tiered administrative hearing system. The initial hearing request will be assigned to an Impartial Due Process Hearing Officer (hereinafter "Hearing Officer") who conducts the hearing and renders a written decision within 45 calendar days of the original hearing request. (34 C.F.R. § 300.511) A party receiving an adverse decision may initiate an administrative appeal to a State Review Officer (Administrative Law Judge) who issues an independent decision within 30 days of the appeal request. (34 C.F.R. § 300.510 and § 300.511) Any party aggrieved by the State Review Officer's decision may initiate an appeal to state or federal court. (34 C.F.R. § 300.512)

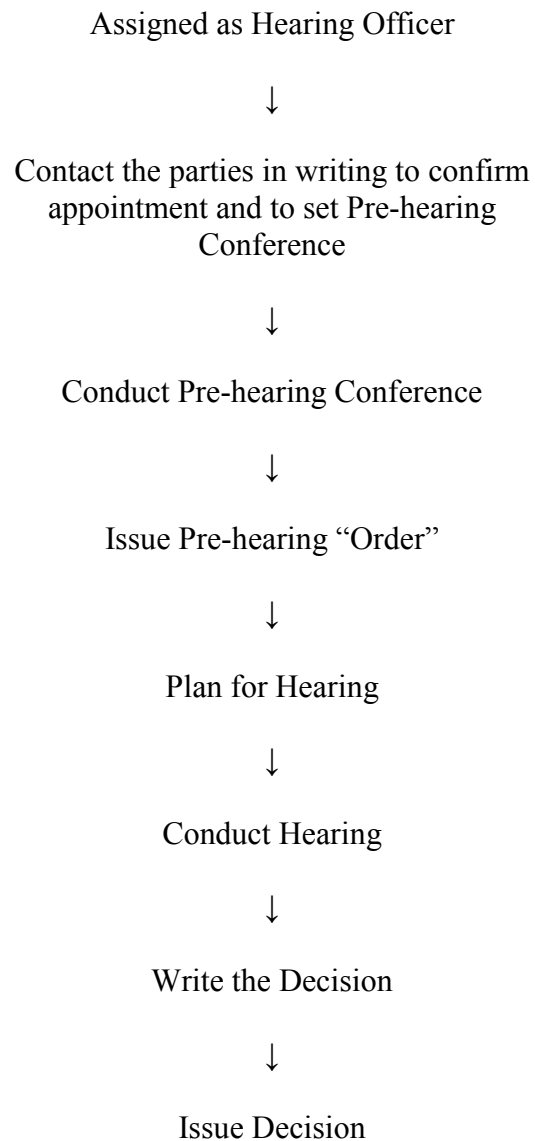
IDEA Due Process System in Arizona



The procedures contained within this document are to be followed by Hearing Officers who are appointed to conduct the initial administrative hearing on the disputed issues. Section VII E. addresses required procedures that pertain to Administrative Reviews and Appeals to State or Federal Court.

The following flowchart illustrates the procedures from assignment to the issuance of a decision.

FLOW CHART OF DUE PROCESS HEARING PROCEDURES



III. ASSIGNMENT OF HEARING OFFICER

A. Impartial Hearing Officer

Arizona regulations define the term *impartial hearing officer* to mean a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. In all cases, any action taken must comply with 20 U.S.C. § 1415, 34 C.F.R. § 300.507 - § 300.514, A.R.S. 15-766, A.A.C. R7-2-405, and federal court decisions. An impartial Hearing Officer shall be:

1. Unbiased – not prejudiced for or against any party in the hearing;
2. Disinterested – not having any personal or professional interest which would conflict with his/her objectivity in the hearing;
3. Independent – may not be an officer, employee, or agent of a public agency involved in the education or care of the child or the State Educational Agency (SEA). A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because he or she is paid by the public agency to serve as a Hearing Officer;
4. Trained and evaluated by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of a free appropriate public education for children with disabilities (*See A.A.C. R7-2-405*).

B. Hearing Officer Selection and Strike Process (*See Attachment A, Sec. VIII*)

When a due process hearing request is received by the Arizona Department of Education/Exceptional Student Services (ADE/ESS), three prospective Hearing Officers will be selected by the ADE/ESS through a random selection process and be screened to determine availability and possible bias. It is important to note that when ADE/ESS is screening a Hearing Officer's availability, the Hearing Officer needs to verify that, *if selected to serve as the Hearing Officer*, the Hearing Officer's schedule will allow the Hearing Officer to complete the hearing and issue a written decision within 45 calendar days of the date the request was received by the public educational agency. The ADE/ESS will provide the resumes of the three prospective Hearing Officers to both parties of the due process request and their attorneys when applicable.

During the Hearing Officer selection process, should:

- Each party strike a separate individual from the list of three prospective Hearing Officers, the

ADE/ESS shall send notification to both parties by the end of the next business day of the remaining prospective Hearing Officer;

- Each party make an identical strike from the list of three prospective Hearing Officers, the ADE/ESS shall select from the two remaining prospective Hearing Officers, through a random selection process, the remaining prospective Hearing Officer and send notification to both parties by the end of the next business day; or
- One or both parties decide not to strike, without cause, from the list of three prospective Hearing Officers, or either party does not submit their strike to the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS, the ADE/ESS shall select a prospective Hearing Officer from the remaining individuals using a random selection process and send notification to both parties by the end of the next business day.

NOTE: If both parties can agree on whom they want for the Hearing Officer (from the list of three names provided), a joint letter, signed by both parties, indicating the name of the mutually agreed upon Hearing Officer, must be received by the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS. The ADE/ESS shall assign that individual as the Hearing Officer.

In the event of an **expedited** due process hearing request, a Hearing Officer shall be assigned by the ADE/ESS using a random selection process. The resume will be reviewed to determine that the Hearing Officer assigned meets the standards specified in A.A.C. R7-2-405.

C. For Cause Objection to Hearing Officer

Either party shall have the opportunity to object for cause regarding a prospective Hearing Officer to serve as the Hearing Officer in the respective due process hearing. These reasons shall be in writing and submitted to the ADE/ESS Dispute Resolution Coordinator. The objection for cause may be submitted at the same time the strike without cause is provided or the notification that the party does not wish to strike any names without cause, or by the end of the third business day of receipt of notification by ADE/ESS of the name of the remaining prospective hearing officer. The objection for cause and the evidence used will be shared with the opposing party and the prospective Hearing Officer. The ADE/ESS shall review the evidence submitted and determine the qualifications of the individual. If the ADE/ESS determines that the individual is not qualified to serve as the Hearing Officer, the ADE/ESS shall repeat the process and randomly select three additional prospective Hearing Officer resumes to provide to each party. Objections for cause shall require specific evidence that the prospective hearing officer does not meet the criteria listed in A.A.C. R7-2-405(D) and (E).

D. Assignment of Hearing Officer

The ADE/ESS shall inform the parties as to the assignment of the Hearing Officer, in writing,

immediately upon the completion of the selection process.

A brief letter will be sent by the ADE/ESS Dispute Resolution Coordinator to the Hearing Officer to confirm that person's assignment and to provide basic information. This information should include:

- The names of the parties;
- The names of their representatives, if known;
- All pertinent telephone numbers and addresses; and
- A copy of the due process hearing request.

It is of the utmost importance that the Hearing Officer review the request to ensure that he/she can carry out the Hearing Officer's responsibilities in an impartial manner and have no conflict of interest. Should a Hearing Officer determine that based on a Hearing Officer's personal and/or professional relationships, the Hearing Officer has a conflict of interest and cannot be impartial, the Hearing Officer has an obligation to recuse himself/herself, that is, remove himself/herself from the case.

The public education agency will issue a purchase order for services rendered by the Hearing Officer. The terms negotiated between the Hearing Officer and the public education agency do not have to be made known to or approved by the ADE/ESS. (*See Attachment B, Section VIII*) The Hearing Officer is responsible for ensuring that the public education agency has made arrangements for providing and paying for a written and/or electronic verbatim record of the hearing. Upon request of the Hearing Officer or the parent, a copy of such written and/or electronic verbatim record of the hearing will be provided to the Hearing Officer and/or parent, without cost. The costs associated with this activity will be paid for by the public education agency involved.

The Hearing Officer selected becomes the authority for all further due process related questions or concerns of the participating parties. For example:

- a. The Hearing Officer must make the decision as to whether or not the complaint is a legitimate due process complaint; and
- b. In cases where "stay put" placement is in question, the Hearing Officer will determine the "stay put" educational placement for the student.

For those Hearing Officers who must travel more than 35 miles one way to conduct a due process hearing, the ADE/ESS will pay for mileage, lodging, and meals at the State approved rates. Please contact the ADE/ESS Dispute Resolution Coordinator for the necessary forms.

IV. PRE-HEARING CONFERENCE

A. Purpose of Pre-Hearing Conference

One of the main responsibilities of a Hearing Officer is to maintain control over the hearing process and see that it operates in an efficient and effective manner. Therefore, the Hearing Officer shall hold a pre-hearing conference, with the parties and/or their representatives as appropriate, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, and to set the time and dates for the hearing (*See A.A.C. R7-2-405 (H) (1)*).

As soon as a Hearing Officer is notified that he or she has been selected as the Hearing Officer, the Hearing Officer shall send a letter to the parties (*or their representatives*) of the Hearing Officer assignment along with the date, time, and purpose of the pre-hearing conference. (*See Attachment C, Section VIII*) The primary purpose of this letter is to introduce the Hearing Officer to the parties and to schedule a pre-hearing conference. This letter should apprise the parties of the matters to be discussed at the pre-hearing conference so they can participate at a time when they are fully prepared to do so. It is suggested that correspondences be faxed so that the preliminary procedural matters do not consume a large portion of the 45-calendar day period. If the parents are unrepresented and do not have a fax number, the correspondence should be mailed so that the parties receive the communication at the same or similar time. Be sure to copy the ADE/ESS Dispute Resolution Coordinator with all correspondence.

The purpose of the pre-hearing conference is to clarify procedural matters and to specify the issues that will be heard. The Hearing Officer should not offer advice to either party; however the Hearing Officer can suggest mediation. The pre-hearing conference must be held in the presence of the parties/representatives concerned. Discussion with either party separately could result in an ex parte (of one part; on one side) relationship that would taint the impartiality of the process. The pre-hearing conference does not have to be telephonic but can be a face-to-face meeting. Where both parties are represented or if distance is a problem, telephonic meetings are efficient and less expensive than a face-to-face meeting. The earlier in the 45-day time line that the pre-hearing conference can be conducted, the better. The pre-hearing conference identifies the issues that are truly in dispute. Many times, it is possible for the parties to work out their disagreement once issues have been formally defined. It also permits the Hearing Officer to raise the issue of settlement or mediation if the circumstances suggest that exploration of this issue would be beneficial to the parties. Conducting the pre-hearing conference provides an opportunity for the Hearing Officer to advise all parties how the hearing will be conducted. Establishing ground rules, which remove surprise from the proceedings, will result in a more efficient and focused evidentiary hearing.

In conducting a pre-hearing conference, the Hearing Officer may want to have a verbatim recording of the proceedings. In the absence of a verbatim recording, the Hearing Officer should

keep extensive, complete, and accurate notes in order to provide a record and to avoid any misunderstandings.

B. Pre-Hearing Conference Checklist

The following summary identifies the potential items that can be covered in a pre-hearing conference.

1. Review whether either party has a concern or objection to the assignment of the particular Hearing Officer.

In the event that a Hearing Officer has what might appear to be a conflict of interest which the Hearing Officer determines will not interfere with the ability to remain impartial, it is strongly suggested that the Hearing Officer disclose such facts to the parties on the record. By doing so the Hearing Officer affords both parties the opportunity to ask clarifying questions and ultimately gives the parties the right to challenge the Hearing Officer's impartiality.

2. If either party is unrepresented, clarify their intent to proceed with or without representation.

IDEA '97 gives both the parent and the public education agency the right to be accompanied and advised by counsel and by an Advisor, an individual with special knowledge or training with respect to the problems of children with disabilities. The Hearing Officer should ensure that the public education agency has carried out its legal requirement of informing the parent of any free or low cost legal or other relevant services available. (See 34 C.F.R. § 300.509 (a) (1) and § 300.507 (a) (3)).

3. Set expectations for the parties and their representatives for their conduct throughout the proceedings.

Special education hearings oftentimes become very emotional and can be adversarial. It is extremely important for the Hearing Officer to clearly set out the expectations of conduct for the parties. Parties/representatives should be warned that rude or discourteous behavior will not be tolerated.

4. Encourage parties to explore mediation or other settlement options.

Mediation is an available option for parties to resolve their differences. It must be voluntary and cannot be used to delay/deny the right to go to a hearing. Hearing Officers should raise the mediation option and encourage parties to pursue mediation if they have not already done so. Hearing Officers, however, should not turn the pre-hearing

conference into a mediation session. (See 34 C.F.R. § 300.506 and 34 C.F.R. § 300.507 (a) (2)) (See Attachment D, Section VIII)

5. Clarify the issue(s) identified by the moving party and the relief they are seeking through the hearing process.

It is critical that the Hearing Officer and both parties have a clear understanding of the specific issue(s) and the relief sought from the hearing process.

According to the Federal Regulations, the public education agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public education agency in a request for a hearing. The notice required must include – (i) The name of the child; (ii) The address of the residence of the child; (iii) The name of the school the child is attending; (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (v) A proposed resolution of the problem to the extent known and available to the parents at the time.” [34 C.F.R. § 300.507 (c)] (See Attachment E, Section VIII).

6. Confirm the Hearing Officer’s jurisdiction to hear the issues and grant the relief sought.

Based on the issue(s) identified and the relief sought, the Hearing Officer may question whether the Hearing Officer has legal jurisdiction to hear the case. Not every concern a party has automatically becomes a special education hearing issue under the IDEA. Should there be a question regarding a Hearing Officer’s jurisdiction over a particular issue, the concern should be raised with both parties and both parties should be given an opportunity to provide the Hearing Officer with legal authority to support/negate jurisdiction. Should the Hearing Officer conclude he/she has no jurisdiction, the Hearing Officer has the authority to dismiss the matter.

7. Review the procedural safeguards applicable to the hearing process.

- a. Do the parents want the hearing open or closed?
- b. Do the parents choose to have their child present at the hearing?
- c. Do the parents desire a written or electronic record of the hearing and decision?

Ensure that the public education agency has made arrangements for providing and paying for a written and/or electronic verbatim record of the hearing. Upon request of the Hearing Officer or the parent, a copy of such written and/or electronic verbatim record of the hearing will be provided to the Hearing Officer and/or parent, without cost.

The IDEA specifically gives the parents the sole right to decide whether the hearing will be open or closed to the public, whether the child who is the subject of the hearing will be present at the hearing, and the form of the hearing record. (See 34 C.F.R. § 300.509 (a) (4) and (5) and (c)).

If the hearing will be closed, the Hearing Officer must decide who in addition to the attorney or Advisor will be allowed to remain in the hearing. Typically, the parent and a public education agency representative are allowed to remain in the hearing room.

8. Review the Hearing Procedures.

- a. Estimate the number of days each party will need to present their case.
- b. Set the hearing date(s), time and place.

The public education agency is responsible for arranging for the hearing room (which must be accessible in accordance with federal and state accessibility guidelines) and recording the hearing. The public education agency shall propose a hearing room subject to an objection by the parent. The place of the hearing must be reasonably convenient to the parents and child involved. (See 34 C.F.R. § 300.511(d)). The IDEA regulations require that there be a written or electronic verbatim record of the hearing, pursuant to the parent's choice, which will be made available to the parties. Therefore, either a court reporter or tape recording device must be arranged for. If a tape recorder will be used, external microphones should be provided in order that the witness', Hearing Officer's and party 's statements will be clearly audible.

9. Review Disclosure Issues (Between the Parties).

- a. Identify the last day for exchange of exhibits and list of witnesses to comply with the "5 Day Rule."

IDEA allows a Hearing Officer to bar a party from introducing as evidence, evaluations completed and recommendations based on the evaluation which have not been disclosed at least 5 business days prior to the hearing (20 U.S.C. § 1415 (f)(2) and 34 C.F.R. § 300.509 (b)).

The IDEA regulations also give either party to the hearing the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing. (34 C.F.R. § 300.509 (a)(3)). This is commonly referred to as the "5 Day Rule."

The 5 Day Rule requires that any documents to be introduced as exhibits at the hearing and names of witnesses to be called and the summary of their testimony be disclosed to the other party. It is recommended that the Hearing Officer also receive the proposed exhibits and witness lists at this time.

- b. Consider ordering the parties to submit a list of joint exhibits.

In order to facilitate the introduction of exhibits, consider ordering the parties (especially if both are represented) to meet and submit joint exhibits. This can serve two purposes: (1) since many, if not most, of the documents will be submitted by both parties (i.e., IEPs, evaluation reports) it is much easier to refer to the same document in the same manner. For example, the latest IEP will be Joint Exhibit #5 instead of Parents Exhibit #7 and District Exhibit D. Secondly, it requires the parties to sit down and work with one another which at times has lead to resolution of the issues. The parties may also stipulate to the admission of the joint exhibits, which leads to a more efficient hearing.

- c. Encouraging voluntary disclosure.

The Hearing Officer should encourage a complete and free exchange of documents and other evidence between the parties, thereby facilitating a thorough airing and exploration of the issues. In the event a party does not cooperate in that effort, the party requesting the documents or things from the other party may move for their production.

10. Discuss Compelling Attendance of Witnesses and the Production of Documents.

- a. Address any request to compel the attendance of witnesses.

Either party has the right to compel the attendance of witnesses. (34 C.F.R. § 300.509 (a)(2)). Witnesses who will not voluntarily give testimony at the due process hearing may be compelled to attend and give testimony by the issuance of a subpoena by the Hearing Officer.

Although the federal regulations give the Hearing Officer the authority to compel the attendance of witnesses, the Hearing Officer does not have the authority to enforce the subpoena of witnesses. However, the legal counsel for the party exercising this right may go through the courts to enforce the subpoena of a witness.

Each party is responsible for serving the subpoenas requested on the person whose attendance is required. "Service" means to legally provide a copy of the subpoena to the person whose attendance is required. "Service" of the subpoena shall be made by a person authorized to serve in accordance with the Arizona Rules of Civil Procedure. A person may "accept service" of a subpoena by signing a document agreeing that service

is complete without actual service. However, unless the subpoena is “served” in accordance with applicable law, it may not be enforceable by a court. (See Attachment F, Section VIII)

- b. Address any request to compel the production of documents from non-parties.

The Hearing Officer has considerable discretion regarding the conduct of the due process hearing. IDEA does not specifically authorize a Hearing Officer to command the production of documents through the use of a subpoena duces tecum. Each Hearing Officer will need to make their own determination regarding requests for issuance of a subpoena duces tecum. Such determination must be made on a case-by-case basis with due consideration of (i) the question of authority to issue a subpoena duces tecum, and (ii) the obligation to protect the rights of the parties to present evidence, and the due process standards of fairness and justice.

11. Discuss Other Evidentiary Issues.

- a. Discuss the "burden of proof."

The "burden of proof" issue is not discussed in the IDEA. Judicial interpretation of this issue from the Ninth Circuit Court of Appeals, which is binding in Arizona, states, "The School clearly has the burden of proving at the administrative hearing that it complied with the IDEA." Clyde K. v. Puyallup School District 35 F.3rd 1396, 21 IDELR 664 (9th Cir. 1994).

- b. Discuss the fact that the Rules of Evidence will not be strictly applied, although there is an expectation to avoid redundant and irrelevant testimony.

12. Other Motions/Requests.

A. Extension of the 45 Day Time Frame

The IDEA regulations require that the Hearing Officer assigned to a case issue a written hearing decision and send it to the parties within 45 calendar days of receipt of the hearing request. Please note that the 45 day time frame begins on the date the public educational agency receives the written request, not the date that the Hearing Officer is assigned to the case (See 34 C.F.R. § 300.511(a)).

The regulations do permit the Hearing Officer to extend the 45 day time line. The Hearing Officer may grant specific extensions of time at the request of either or both parties. The regulations do not permit the Hearing Officer to extend the 45-day time frame on his/her own initiative (See 34 C.F.R. § 300.511 (c)).

Since the Arizona Department of Education is given the legal responsibility to ensure that this requirement is adhered to, the Hearing Officer is required to complete a Timeline Extension Confirmation to be sent to both parties, as well as the Arizona Department of Education/Exceptional Student Services. (*See Attachment G, Section VIII*)

B. Motion to Dismiss.

Hearing Officers are authorized to determine whether the issues raised are within the jurisdiction of an IDEA hearing (OSEP Policy letter, October 1990). If a party files a Motion to Dismiss, a Hearing Officer, after giving both parties the opportunity for oral/written argument, may dismiss the proceeding based on lack of jurisdiction.

C. Motion for Recusal.

Although these guidelines have previously addressed the potential need for a Hearing Officer to recuse themselves based on a conflict of interest, a party may move for recusal. Although the IDEA does not describe the applicable standard in such a situation, courts have found the standard is analogous to one involving the disqualification of federal judges. Only if a decision to sit "cannot be defended as a rational conclusion supported by a reasonable reading of the record" will the court insist upon disqualification. Manchester School District v. Christopher B. 19 IDELR 143 (D. N.H. 1992).

D. Clarification of "stay put".

The student who is the subject of the hearing must remain in his/her present educational placement during the pendency of the hearing process unless the public education agency and parents agree otherwise. (34 C.F.R. § 300.514). This is known as the "stay put" rule.

E. Access to Records

Parents are given the right to inspect and review the education records of their child prior to the hearing. (34 C.F.R. § 300.562(a)). The term education records is broadly defined by federal law to mean those records, files, documents, and other materials (such as video or audio tapes) which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. Test instruments and question booklets that identify a particular student, whether or not the actual name of the student appears on the materials, are presumptively educational records. A test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be an education record, but a parent would have the right to request an explanation and interpretation of the answer sheet (which would

constitute an education record of such student). Typically, the right to inspect and review educational records in the context of a due process proceeding will require the public education agency to provide parents with copies of the records as soon as is reasonably possible. Distribution of copies of some documents, such as test protocols, may be protected by federal copyright law, but parents would have the right to access, inspect and review such documents.

13. Determine if any individual who will participate in the hearing is in need of an accommodation such as an interpreter. The public education agency is responsible for making any necessary arrangements and paying the costs for any such accommodation. The public education agency may call the Arizona Department of Education/Exceptional Student Services Division for any technical assistance regarding this matter.
14. Determine whether any briefing will be required, and when such briefs are due.

C. Written Confirmation of Pre-Hearing Conference

Immediately after the pre-hearing conference, the Hearing Officer shall make the conference a matter of record by writing a letter to all parties concerned. (*See Attachment H, Section VIII*)

The letter should contain a confirmation of matters addressed during the pre-hearing conference including: (1) a specific statement of the issues to be resolved at the hearing, (2) the time, place, and other physical arrangements for the hearing, and (3) clarification on any procedural points including pre-hearing deadlines, and various responsibilities of the parties. The confirmation letter can also help to avoid unnecessary issues arising at hearing, such as (1) a party's failure to appear; (2) a party's failure to meet a pre-hearing deadline; (3) a party not being prepared to proceed with the provision of evidence; (4) a party seeking a last-minute continuance where good cause is not shown; (5) assuring that an appropriate and accessible location has been set aside for the hearing; (6) assuring that interpreters or assistive technology devices are available, if needed; and (7) assuring that a record is prepared of the hearing. The letter does not have to be a verbatim recitation of everything discussed in the pre-hearing conference. Its chief purpose is to set forth the matters either stipulated to by the parties or ordered by the Hearing Officer. While many disputes will require only one pre-hearing conference, there may be occasions when two or more conferences will prove to be of assistance. In each case, the Hearing Officer should prepare and issue a letter confirming the matters addressed in each conference. This document should be prepared as close in time as possible to the pre-hearing conference and should be either mailed or sent by fax to the parties.

V. PREPARING FOR THE HEARING

In order to ensure that the hearing will proceed smoothly, according to the agenda, and follow the hearing procedures that the Hearing Officer has developed prior to the hearing date, the Hearing Officer will want to:

1. Ensure that the public education agency has made arrangements for providing and paying for a written and/or electronic verbatim record of the hearing. Upon request of the Hearing Officer or the parent, a copy of the written and/or electronic verbatim record of the hearing will be provided to the Hearing Officer and parent, without cost.
2. Ensure that the hearing room has been confirmed by the public education agency. The public education agency shall propose a hearing room subject to an objection by the parent. The place of the hearing must be reasonably convenient to the parents and child involved. (See 34 C.F.R. § 300.511(d)). The hearing room should be physically accessible (in accordance with federal and state accessibility guidelines) and in a quiet and private space. Have the room arranged so that there is a separate witness chair close to the recorder and the Hearing Officer. Two tables with chairs need to be set up for the parties and their representatives.
3. Determine if any individual who will participate in the hearing is in need of an accommodation such as an interpreter. The public education agency is responsible for making any necessary arrangements and paying the costs for any such accommodation. The public education agency may call the Arizona Department of Education/Exceptional Student Services Division for any technical assistance regarding this matter.
4. Develop an outline of the Hearing Officer's opening and closing statements including:

OPENING STATEMENT (*See also section VI(A) below*)

- a. Identification of the hearing for the record;
- b. An overview of what a hearing is; and
- c. Review of hearing procedures (*e.g., rules for presenting evidence, witnesses, etc.*)

CLOSING STATEMENT (*See also section VI(C) below*)

- a. Summary of the hearing process which has taken place.

b. Outline what will happen next.

- Both sides will receive a written report of the facts and findings of the hearing including the decision of the Hearing Officer within 45 days from the date the hearing was requested unless an extension was granted.
 - A request to submit post-hearing memorandums with dates for submission.
5. Be prepared to take notes during the hearing, for the Hearing Officer's own use, even though a court reporter may be present.
- Have a sheet ready to list evidence.
 - Have a sheet ready to list witnesses.
6. Review the proposed exhibits and list of witnesses shared in response to the "Five Day Rule."
7. Have a copy of the affirmation oath that will be used to swear in witnesses.

Example:

Please stand, raise your right hand: "In the testimony you are about to give, do you affirm that you will tell the whole truth and nothing but the truth?"

VI. CONDUCTING THE HEARING

A. Introductory Remarks

THE HEARING OFFICER BEGINS THE HEARING BY:

1. Formally calling the hearing to order at the appointed time.
2. Identify the hearing for the record or transcript; make a formal statement that: "The Impartial Due Process hearing on behalf of *(student's legal name)* is now convened on *(date)* at *(time)*. The impartial Hearing Officer presiding is (legal name of Hearing Officer). The parent(s) is *(legal name(s) of (address))*. * The public education agency is *(legal name(s) of (address))*. * The written request for the hearing was submitted on *(date)*. The stated reason for the request was *(identify issues)*."

*If a representative, as opposed to the parent or superintendent, e.g., legal counsel will present the case, the representative should also be introduced at this time.

3. Describe that the Impartial Due Process Hearing is an opportunity for parents and school personnel to meet before an unbiased individual, the Hearing Officer, when there are differences about any matter relating to the identification, evaluation, educational placement of the student, or the provision of a free and appropriate public education.
4. Describe the role of the Hearing Officer during the hearing:
 - a. To conduct the hearing in an orderly and unbiased manner;
 - b. To provide an opportunity for full presentation of relevant testimony; and
 - c. To arrive at a decision based solely on the testimony and other evidence presented during the hearing.
5. Review the hearing procedures that will be followed. For purposes of tape recording the hearing, all participants should identify themselves by name each time they speak throughout the hearing. All participants should avoid using gestures (*e.g., nodding head instead of saying "yes"*).
6. Assure that parents have been given full opportunity to be notified, to understand, and to exercise their due process rights.
7. Restate the parents wish to have the hearing open or closed to the public at this time (the

Hearing Officer may, at this time, clear the hearing room if they have requested a closed hearing).

8. Ask if the parties (*or their representative*) wish to make a brief opening statement. *

*NOTE: No questions shall be allowed during or after this statement. An opening statement is not evidence.

B. Presentation of Evidence and Testimony

THE HEARING OFFICER CAN USE THE FOLLOWING GUIDELINES DURING THIS PHASE OF THE HEARING:

1. The Hearing Officer may ask that witnesses leave the room until they are called to testify.*

*NOTE: This is done if the hearing has been requested to be a closed hearing or a request to sequester the witnesses has been granted.

2. The Hearing Officer will usually call all witnesses for the public education agency in the order requested. The Hearing Officer will then call all witnesses for the parent in the order requested.
3. All witnesses should be seated near the Hearing Officer and the tape recorder, or court reporter.
4. Each time a new witness is called:
 - a. The Hearing Officer will administer the affirmation oath or direct that it be administered.
 - b. In the absence of legal counsel, the Hearing Officer will ask each witness to be identified by asking their:
 - legal name
 - address
 - position or title
 - relationship to student
 - c. The party calling the witness is given the opportunity to ask their witnesses relevant questions.

- d. The party will be given the formal opportunity to challenge or cross-examine the testimony and evidence of the witness.
 - e. A period will follow for recross-examination of testimony and evidence presented.
 - f. The Hearing Officer may ask for clarification of testimony, terminology or evidence when necessary, or such other information as the Hearing Officer may deem appropriate. This is especially true when the parent is pro se, that is, without representation.
 - g. The Hearing Officer will ask if either party will require further testimony from the witness at a later time. The Hearing Officer will excuse the witness at this time unless one of the parties has requested they remain available.
5. When documentary evidence is submitted, the Hearing Officer must keep a complete record of documents entered into evidence, and any documents that were not admitted into evidence. A list of admitted evidence will be required for the Hearing Officer's Certification of Record as described in Section VII (D) below. The Hearing Officer may request that the parties stipulate to the admission of the exhibits provided in the disclosure materials subject to specific objections raised during the hearing.
 6. The Petitioner and the Respondent may enter a statement of evidence at any time for the purpose of having the evidence or statement shown in the transcript of the hearing.

C. Concluding Remarks

1. The Hearing Officer asks the parties if they have any additional statements or evidence they wish to enter into the record of hearing (*i.e., to appear on the transcript of the hearing*).
2. The Hearing Officer then asks if brief summary statements will be given:
 - a. By the Public Education Agency or a representative
 - b. By the Parent or a representative
3. The Hearing Officer ends the hearing with:
 - a. An overview of the due process and procedural safeguards. *[During this hearing, each party had the opportunity to examine its witness identified in the disclosure statement and to cross-examine the other parties' witnesses.*

Each party had the right to offer into evidence all documents that were included in the disclosure to the other party prior to the hearing and the right to object to the introduction of such exhibits. Each party was allowed to make both a brief opening and closing statement.]

- b. What will happen next:

A schedule for the submission of any post-hearing materials by the parties.

The Hearing Officer will arrive at a decision which the parties will receive within 45 calendar days after the public education agency's receipt of the request for a hearing.

- c. A statement of the procedures for appeal following the hearing.
- d. Adjournment of the hearing.

VII. WRITING AND ISSUING THE DECISION

A. The Purpose of the Decision

The purpose of the decision is to summarize the pertinent evidence presented at the hearing and to make a conclusion based upon the evidence to decide the issue. The Hearing Officer's responsibility is to decide what is legally appropriate for the student not whether the parents' or the public education agency's position is correct. It is possible that based on the record, the Hearing Officer will issue a decision which is different than either parties' position.

B. Form and Content of Final Decision

The Hearing Officer prepares the final decision based solely on the evidence and testimony presented at the hearing. The form and content of the final decision includes the following.

The Cover Page

The cover page is a separate page for listing personally identifiable information from the due process hearing. The Hearing Officer should place the personally identifiable information on the cover page, and refer to the parties in the body of the decision in generic terms (i.e., Mother, Father, School District). Under Federal Regulations, all hearing decisions must be forwarded to the State's Advisory Council. Therefore, by using generic terms in the body of the decision it will allow the reader to have the full decision without blacked out portions. *(See Attachment I, Section VIII)*

Decision *(See Attachment J, Section VIII)*

A. Introduction

This section should describe the process leading up to the issuance of the decision including the party requesting the hearing, date of request, whether the parties were represented by legal counsel or assisted by an Advisor, the pre-hearing date, whether any continuance(s) were granted, hearing dates and post-submissions. This section should also clearly state the issue(s), which were the subject of the hearings.

B. Findings of Fact

This section which is required by the regulations sets out the evidence relied upon by the Hearing Officer to address the issues. It is suggested that the findings be numbered and

reference where in the evidence the facts were established.

Example:

The student was determined to be eligible for special education and related services by the Multidisciplinary Evaluation Team on June 1, 1999. (*Exhibit A, Testimony of Special Education Teacher*)

C. Conclusions of Law/Reasons

In this section of the decision the Hearing Officer analyzes and applies the facts to the applicable legal standard.

D. Order

The Hearing Officer must decide the issues presented to him/her. If it is found that the public education agency did not adhere to all of the legal requirements, the Order should specify clearly what must be done and a date for completing the action(s).

E. Appeal Process

The decision should refer to the applicable appeal process.

If this is the first tier hearing, the appeal statement should read:

1. Either party has the right to appeal this Decision to the Office of Administrative Hearings within thirty five (35) calendar days after receipt of this Decision. (A.A.C. R7-2-405 (H) (5)) Requests for appeal must be submitted in writing to the Dispute Resolution Coordinator, Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson Street, Phoenix, Arizona 85007. (A.A.C. R7-2-405 (J) (1))

If this is the second tier, the applicable appeal process is:

1. The findings of fact and decision of the administrative law judge shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review (A.A.C. R7-2-405 (J) (3)).

F. Sign and Date the Decision.

C. Issuance and Delivery of the Final Decision

The final decision must be completed and mailed within 45 days following the request for the Impartial Due Process Hearing (subject to any extensions requested by a party and granted by the Hearing Officer). The final decision is considered "submitted" when typed copies are sent to both parties by Certified Mail, Return Receipt Requested or delivered in person. It should be noted that the Hearing Officer shall also maintain a copy of the final decision.

A copy of the final decision shall be mailed (as noted above) or delivered in person to:

- 1) The Superintendent or Director of the public education agency;
- 2) The student's parent, guardian, or surrogate;
- 3) The student, if over 18 years of age;
- 4) If any party is represented by legal counsel, to such legal counsel;
- 5) If any party is assisted by an Advisor, the Hearing Officer should ascertain if the Advisor should be provided a copy; and
- 6) The Arizona Department of Education/Exceptional Student Services.

D. Delivery of Original Documents and Certification of Record

The Hearing Officer shall deliver the following original documents to ADE/ESS (which constitute the complete record of the due process proceeding): (1) the verbatim transcript (or audio tape) of the hearing, (2) the submitted documentary evidence (including an index of exhibits admitted), (3) all depositions, exhibits, letters, pleadings and orders filed or issued in the case (including a Record of Proceeding describing all pleadings and orders), and (4) the final decision. In addition, the Hearing Officer shall complete a "Certification of Record" (including the attached index of exhibits and Record of Proceeding) to certify that the listed documents itemize the entire record. The original Certification of Record shall be sent to ADE/ESS along with the record, and a copy of such Certification of Record shall be sent to the parties and other persons to whom a copy of the final decision is sent pursuant to section VI(C) above. (*See Attachment K, Section VIII*)

The record of the due process proceeding and the Certification of Record shall be sent by the Hearing Officer to ADE/ESS by (1) hand delivery, (2) via a nationally recognized overnight courier service, or (3) via certified United States mail, return receipt requested. ADE/ESS will verify its receipt of the complete record. Then, ADE/ESS will notify the Hearing Officer of its receipt of the record, or, if applicable, request any missing documents from the Hearing Officer.

E. Administrative Reviews and Appeals to State or Federal Court

Questions and Answers regarding the appeal process:

Can the Impartial Due Process Hearing decision be appealed?

Both parties can appeal the Impartial Due Process Hearing decision to an Administrative Review Officer, who must meet the same impartiality requirements required for local or first level Impartial Due Process Hearing Officers. The request for an appeal must be made through the Arizona Department of Education, Exceptional Student Services within 35 calendar days after receiving the decision of the Impartial Due Process Hearing Officer.

What happens during an Administrative Review?

The Executive Director of the Office of Administrative Hearings will assign an Administrative Law Judge to serve as the Administrative Review Officer. The Administrative Review Officer will examine the entire first level Impartial Due Process Hearing record, insure that required procedures were followed, and make an independent decision. The Administrative Review Officer may take additional evidence if he or she believes it is necessary, and may allow the parties an opportunity for additional argument in person or in writing. If the Administrative Review Officer allows additional argument, it will be conducted at a time and place that is convenient to the parent and their child, who may be present if they wish.

How long will a review decision take?

The Administrative Review Officer must reach a decision and deliver a copy of the written or, at the option of the parent, electronic findings of fact and decisions to each of the parties within 30 calendar days after receiving the request for appeal. This date may only be delayed if the Administrative Review Officer grants a specific extension of time following the request of either party. If neither party appeals the decision, it is final. After any personally identifiable information is deleted, a copy of the findings and decisions will be transmitted to the Special Education Advisory Committee, and made available to the general public.

Can an appeal be filed in state or federal court?

The Administrative Review Officer's decision is final unless either party files a civil action. Either party has the right to appeal any Administrative Review decision to the appropriate state or federal court.

Can parents be awarded attorney's fees?

Parents may be awarded attorney's fees by the state or federal court if they prevail on a substantial number of the issues in a particular Impartial Due Process Hearing. Parents can

substantially prevail without winning everything that they want from the school. Parents may also be awarded attorney's fees if the court finds that the school unnecessarily drew out the final resolution of the action or proceedings or if there was a violation of section 1415 of the Individuals with Disabilities Education Act Amendments of 1997. Fees awarded shall be based on rates prevailing in the community in which the action or proceedings arose for the kind and quality of services furnished, and are not subject to the use of a bonus or multiplier. Parents cannot be awarded attorney's fees for IEP meetings, unless the meeting is ordered as a result of an administrative proceeding or judicial action. Parents also cannot be awarded attorney's fees for a mediation conducted prior to the filing of a request for an Impartial Due Process Hearing. Attorney's fees may be reduced if parents unreasonably draw out the final resolution, if their attorney's fees exceed the prevailing hourly rate, if the time spent by the attorney and the legal services furnished were excessive, or if their attorney failed to provide appropriate information to the school. Whether the parent is entitled to attorney's fees can be a difficult determination and must be made by a court, not by the Impartial Due Process Hearing Officers or the Administrative Review Officer.

Where will the child be placed during the Impartial Due Process Hearing, Administrative Review, or court action?

In general, unless agreed to by both parties, the school cannot change the child's placement as it existed on the day the parent asked for an Impartial Due Process Hearing until the completion of all legal proceedings. However, if an Impartial Due Process Hearing Officer agrees with the parent that a change of placement is appropriate, that placement must be treated as an agreement between both parties. If the child is entering public school for the first time, the law requires that, if the parent agrees, the school places him or her in the public school program that he or she would otherwise be entitled to attend, until any hearings or court proceedings are concluded, unless both parties agree to a different placement. There are some exceptions to this general rule (See the "Discipline Procedures" outlined in the implementing regulations of the Individuals with Disabilities Education Act Amendments of 1997).

VIII. ATTACHMENTS

Due Process Hearings Suggested Letter Formats and Miscellaneous Items

As part of our continued efforts to ensure that the 45-day time line governing due process hearing decisions is met, the Arizona Department of Education, Exceptional Student Services, (ADE/ESS) is providing several suggested letter formats for use in expediting the processing of requests for due process. Because no two cases are the same, the suggested letter/forms should only be considered as guidelines. Since parents or legal guardians initiate the majority of requests for due process, we have drafted the letter/forms accordingly. In the event a public education agency initiates due process, editorial changes will be required. In addition, several other miscellaneous items are included for your information.

Attachment A	Hearing Officer Selection Procedures
Attachment B	Purchase Order Letter to Public Education Agency
Attachment C	Hearing Officer Introduction/Pre-Hearing Conference Letter
Attachment D	Vacating the Hearing Letter
Attachment E	Model Complaint Form (Due Process)
Attachment F	Subpoenas
Attachment G	Timeline Extension Form
Attachment H	Record of Pre-Hearing Conference Letter
Attachment I	Cover page of Decision
Attachment J	How to Write Findings of Fact and Conclusions of Law
Attachment K	Certification of Record

ATTACHMENT A

REVISED 10/23/01

SPED 00-09

M E M O R A N D U M

September 16, 1999

TO: Superintendents
County School Superintendents
Special Education Directors
Charter School Administrators
Secure Care Settings
Private Approved Special Education Facility Administrators
Special Education Due Process Hearing Officers
Others Interested in Special Education

FROM: Steven N. Mishlove
Director of Administrative Services
Exceptional Student Services
(602) 542-3084

SUBJECT: Revised Impartial Due Process Hearing Officer Selection Procedures

The Exceptional Student Services Division of the Arizona Department of Education (ADE/ESS) is responsible for facilitating and tracking due process hearing requests. Under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), and its implementing regulations, an impartial due process hearing may be initiated regarding the identification, evaluation, educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to the child by the parent or public education agency [20 USC 1415 (f) and 34 CFR 300.507 (a)(1-2)]. **The ADE/ESS maintains a list of the persons who can serve as hearing officers as well as a resume that describes the qualifications of each of those persons.**

The following is a clarification of the steps to be taken by the public education agency:

1. Immediately notify the ADE/ESS when a written request for an Impartial Due Process Hearing is received. Send a copy of the written request to the Dispute Resolution Coordinator via facsimile at (602) 364-0641. The request may be in a letter format or by completing the "Model Complaint Form." The request need only be a request for an Impartial Due Process Hearing, details of the issue(s) and proposed resolution can be obtained by the ADE/ESS and noted on a "Model Complaint Form" that will be shared with the public education agency and the Impartial Due Process Hearing Officer. If the public

education agency is aware of a possible request in advance, the public education agency may provide a copy of the "Model Complaint Form" to the parent(s) making the request.

NOTE: A copy of the Model Complaint Form may be obtained from ADE/ESS by calling (602) 542-3084 or via the internet at: <http://www.ade.state.az.us/ess/Dispute/Default.htm>

NOTE: A parent's right to an Impartial Due Process Hearing may not be denied or delayed for failure to provide notice. Therefore, the 45-calendar day timeline begins after the public education agency receives a written request for a hearing. It is very important that the ADE/ESS be immediately informed of any request for an Impartial Due Process Hearing.

2. The public education agency will issue a purchase order for services rendered by the Impartial Due Process Hearing Officer. The terms negotiated between the Impartial Due Process Hearing Officer and the public education agency do not have to be made known to or approved by the Arizona Department of Education. In addition, the public education agency shall make arrangements for providing and paying for a written and/or electronic verbatim record of the hearing. Upon request of the Impartial Due Process Hearing Officer or the parent, a copy of such written and/or electronic verbatim record of the hearing will be provided to the Impartial Due Process Hearing Officer and/or parent, without cost.

The following is a clarification of the steps to be taken by the parties involved:

1. Each party will review the resumes of the three randomly selected and prospective Impartial Due Process Hearing Officers provided by the ADE/ESS and will have the option to select the name of an Impartial Due Process Hearing Officer they would like stricken from the list without cause; however, each party does have the option not to strike any of the names provided. The name stricken without cause or notification that the party does not wish to strike any names must be submitted to the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS.

NOTE: If both parties can agree on whom they want for the Impartial Due Process Hearing Officer (from the list of three names provided), a joint letter, signed by both parties, indicating the name of the mutually agreed upon Impartial Due Process Hearing Officer, must be received by the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS.

2. Before either party can object to any of the names of the prospective Impartial Due Process Hearing Officers provided by the ADE/ESS for cause, each party shall strike one prospective Impartial Due Process Hearing Officer without cause, or indicate that you waive your option to strike without cause.
3. Either party shall have the opportunity to object for cause regarding a prospective hearing officer to serve as the Impartial Due Process Hearing Officer. These reasons shall be in writing and submitted to the Dispute Resolution Coordinator. The objection for cause may be submitted at the same time the strike without cause is provided or the notification that the party does not wish to strike any names without cause, or by the end of the third business day of receipt of notification by ADE/ESS of the name of the remaining prospective Impartial Due Process Hearing Officer. The objection for cause and the evidence used will be shared

with the opposing party and the prospective Impartial Due Process Hearing Officer. The ADE/ESS shall review the evidence submitted and determine the qualification of the individual. If the ADE/ESS determines that the individual is not qualified to serve as the Impartial Due Process Hearing Officer, the ADE/ESS shall repeat the process and randomly select three additional prospective Impartial Due Process Hearing Officer resumes to provide to each party. Objections for cause shall require specific evidence that the prospective Impartial Due Process Hearing Officer does not meet the following criteria:

An Impartial Due Process Hearing Officer shall be:

- **Unbiased** – not prejudiced for or against any party in the hearing;
- **Disinterested** – not having any personal or professional interest that would conflict with objectivity in the hearing;
- **Independent** – may not be an officer, employee or agent of a public education agency involved in the education or care of the child, or ADE [a person who otherwise qualifies to conduct a hearing is not an employee of the public education agency or the ADE/ESS solely because the person is paid by the public education agency to serve as an Impartial Due Process Hearing Officer];
- **Trained and evaluated** by the ADE/ESS as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities.

Impartial Due Process Hearing Officer qualifications and training must include:

- **Participation in all required training and evaluation** conducted by the ADE/ESS as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities;
- **Demonstration of competency** by achieving a minimum score of 80% on a criterion-referenced test selected by the ADE/ESS;
- **An Impartial Due Process Hearing Officer shall be an attorney** licensed to practice law in the United States or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar association. Two years experienced as a licensed, practicing attorney. Experience in special education related matters as an Impartial Due Process Hearing Officer or practicing attorney.
- **An Impartial Due Process Hearing Officer shall not have represented** a parent in a special education matter during the preceding calendar year and shall not have represented a public education agency in any matter during the preceding calendar year.

The following is a clarification of the steps to be taken by the ADE/ESS:

1. Upon receipt of the request by the ADE/ESS, the Impartial Due Process Hearing Officer will be selected within ten business days. Three prospective Impartial Due Process Hearing Officers will be selected by the ADE/ESS through a random selection process after the pool of active Impartial Due Process Hearing Officers have been screened to determine availability and possible bias. The ADE/ESS will provide the resumes of the three prospective Impartial Due Process Hearing Officers to both parties of the due process request and their attorneys when applicable.

2. During the Impartial Due Process Hearing Officer selection process, should:

- Each party strike a separate individual from the list of three prospective Impartial Due Process Hearing Officers, the ADE/ESS shall send notification to both parties by the end of the next business day of the remaining prospective Impartial Due Process Hearing Officer;
- Each party make an identical strike from the list of three prospective Impartial Due Process Hearing Officers, the ADE/ESS shall select from the two remaining prospective Impartial Due Process Hearing Officers, through a random selection process, the remaining prospective Impartial Due Process Hearing Officer and send notification to both parties by the end of the next business day; or
- One or both parties decide not to strike, without cause, from the list of three prospective Impartial Due Process Hearing Officers, or either party does not submit their strike to the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS, the ADE/ESS shall select a prospective Impartial Due Process Hearing Officer from the remaining individuals using a random selection process and send notification to both parties by the end of the next business day.

When both parties are notified of the remaining prospective Impartial Due Process Hearing Officer, either party will have an opportunity to object for cause (if this action has not already been taken regarding this prospective Impartial Due Process Hearing Officer). The objection for cause must be received by ADE/ESS by the end of the third business day of receipt of notification by ADE/ESS. These reasons shall be in writing and submitted to the Dispute Resolution Coordinator. The objection for cause and the evidence used will be shared with the opposing party and the prospective Impartial Due Process Hearing Officer. The ADE/ESS shall review the evidence submitted and determine the qualifications of the individual. If the ADE/ESS determines that the individual is not qualified to serve as the Impartial Due Process Hearing Officer, the ADE/ESS shall repeat the process and randomly select three additional prospective Impartial Due Process Hearing Officer resumes to provide to each party. Objections for cause shall require specific evidence that the individual selected to serve does not meet the criteria outlined on page 3 of this Memorandum.

NOTE: If both parties can agree on whom they want for the Impartial Due Process Hearing Officer (from the list of three names provided), a joint letter, signed by both parties, indicating the name of the mutually agreed upon Impartial Due Process Hearing Officer, must be received by the Dispute Resolution Coordinator within three business days of the receipt of the three resumes provided by the ADE/ESS. The ADE/ESS shall assign that individual as the Impartial Due Process Hearing Officer.

3. The ADE/ESS shall inform the parties as to the assignment of the Impartial Due Process Hearing Officer, in writing, immediately upon the completion of the selection process. A brief letter will be sent by the Dispute Resolution Coordinator to the Impartial Due Process Hearing Officer to confirm that person's assignment and to provide basic information. This information should include: (1) the names of the parties, (2) the names of their representatives, if known, (3) all pertinent telephone numbers and addresses, and (4) a copy of the Impartial Due Process Hearing request. If at all possible, it is suggested that correspondences be faxed so that the preliminary procedural matters do not consume a large portion of the 45-calendar day period.

4. The strike provisions specified are not applicable in the event of an Expedited Due Process Hearing request. Impartial Due Process Hearing Officers for an Expedited Due Process Hearing shall be assigned by the ADE/ESS using a random selection process. The resume will be reviewed to determine that the Impartial Due Process Hearing Officer assigned meets the standards specified in the above bulleted list.

The following is a clarification of the steps to be taken by the Impartial Due Process Hearing Officer:

1. Once the Impartial Due Process Hearing Officer has been selected, it becomes his or her responsibility to confirm, in writing, his or her assignment with both parties and their attorneys, when appropriate. The purpose of the confirmation letter is to introduce the Impartial Due Process Hearing Officer to the parties and to schedule a pre-hearing conference where, among other things, mediation may still be considered as a viable course of action. If the parents are not represented by an attorney and do not have a fax number, the correspondence should be mailed so that the parties receive the communication at the same or similar time. Be sure to copy the Dispute Resolution Coordinator with all correspondence.
2. The Impartial Due Process Hearing Officer shall ensure that the public education agency has made arrangements for providing and paying for a written and/or electronic verbatim record of the hearing. Upon request of the Impartial Due Process Hearing Officer or the parent, a copy of such written and/or electronic verbatim record of the hearing will be provided to the Impartial Due Process Hearing Officer and/or parent, without cost. This will ensure the timely availability of a complete record in case of an appeal.
3. The Impartial Due Process Hearing Officer selected becomes the authority for all further due process related questions or concerns of the participating parties. For example:
 - a. The Impartial Due Process Hearing Officer must make the decision as to whether or not the complaint is a legitimate due process complaint; and
 - b. In cases where the “stay put” placement is in question, the Impartial Due Process Hearing Officer will determine the “stay put” educational placement for the student.
4. For those Impartial Due Process Hearing Officers who must travel more than 35 miles one way to conduct an Impartial Due Process Hearing, the ADE/ESS will pay for mileage, lodging, and meals at the State approved rates. Please contact the Dispute Resolution Coordinator at (602) 542-3084 for the necessary forms to document these activities.

ATTACHMENT B

[Hearing Officer Letterhead]

[Date]

VIA FACSIMILE

Director of Special Education
[District, Charter School or Agency]

RE: *[Student's name v. public education agency]*

Dear _____:

This letter will confirm that I have been selected to serve as the impartial due process hearing officer in the above referenced matter. The *[District, Charter School or Agency]* will issue a purchase order reflecting its agreement to pay my hourly rate of \$_____ and reimbursement for the actual expenses associated with the due process hearing, including photocopies, faxing, postage (including express mail, if approved in advance), and conference calls. *[Note: these elements may require modification, dependent upon the particular terms negotiated with the public education agency].*

Sincerely,

Hearing Officer

ATTACHMENT C

[Hearing Officer Letterhead]

[Date]

VIA FACSIMILE

[Parent/Parent's representative]

[School/agency's legal counsel]

RE: *[student's name v. District, Charter School or Agency]*

Dear _____ and _____:

I have been selected to serve as the due process hearing officer in response to the request for a due process hearing submitted by *[the parents/guardians of student name]* or *[the District, Charter School or Agency]*. I have been provided with a copy of the *[date]* letter submitted by *[author's name]* and addressed to *[name, title]* at *[the District, Charter School or Agency]*.

The due process hearing is scheduled to commence on _____ day, _____, 19__ at _____. _m. at *[street address]*, *[city]*, Arizona in the _____ Conference Room of *[the District, Charter School or Agency]*. I would ask both parties to also reserve _____ day, _____, 19__, for hearing in the event the evidentiary portion of the hearing cannot be concluded in one day. If either party has a conflict with these dates, please advise during the pre-hearing conference. The purpose of this letter is to address certain procedural ground rules for the hearing.

A. Pre-Hearing Telephonic Conference.

A pre-hearing telephonic conference will be conducted on ____ day, _____, 19__ at ____ m. *I will set up the call and contact the parties at the following telephone numbers: [parent's representative (____-____)] and school's legal counsel (____-____)].* If this date or time presents a conflict for either party or if the stated telephone numbers are incorrect, please notify me immediately.

The purpose of the pre-hearing conference is to establish the following information:

1. To determine whether either party has a concern about my serving as the hearing officer in this matter;
2. To confirm whether the *[date]* letter of *[author's name]* accurately states the issues which the petitioner wishes to raise at the hearing and, if not, what other additional legal and/or factual issues are to be presented concerning *[student's name]*. No new issues will be allowed to be asserted at the due process hearing, absent good cause why they were not raised at the pre-hearing conference;

ATTACHMENT C (continued)

Page 2

3. Whether either side intends to raise any procedural issues; for example, jurisdiction of the hearing officer, other necessary parties, notices, etc.;
4. The estimated number of witnesses to be called by each party and, briefly, the topics about which you anticipate they will testify; **Note: The parties are not required to disclose the names of their respective witnesses at the pre-hearing conference and cannot be compelled to reveal their witnesses at this juncture in the proceeding. Mandatory disclosure is addressed through the “Five Day Rule” which directs the exchange of such information five business days prior to the hearing.**
5. Whether the parent has been provided the opportunity to inspect their [son's/daughter's] educational records;
6. Who will proceed first and how the hearing will be handled; **Note: Regardless of the order of presentation of evidence, the local educational agency bears the burden of proving compliance with the IDEA at the administrative hearing level. Clyde K. v. Puyallup Sch. Dist., 35 F.3d 1396 (9th Cir. 1994).**
7. How much time the parties estimate the hearing will require;
8. Various procedural issues associated with the hearing (open/closed, child present or not, form of record, whether an interpreter is necessary, whether any assistive technology devices are necessary, whether any participant requires special accommodations, whether each hearing and each review involving oral arguments which is to be conducted will be at a time and place that is reasonably convenient to the parents and child involved, etc.);
9. Whether any briefs are to be submitted and, if so, when;
10. Whether there are any material facts with respect to these issues to which the parties can stipulate or agree; for example, a summary of the student's educational history, chronology of events, etc.;
11. The timing and manner by which information about evidence to be introduced at hearing will be exchanged by the parties; and
12. Whether there are any other matters of importance which the parties would like to bring to my attention.

I will prepare a letter summarizing the matters discussed and agreed upon during the pre-hearing conference for your reference. The letter will become part of the administrative record. Therefore, either party will have the right to state any objection, correction or supplementation to it.

I am enclosing the agenda for the hearing so the parties will be aware of the steps that will occur and the order in

ATTACHMENT C (continued)

Page 3

which they will occur. Should either party have any questions concerning the agenda, we may discuss those during the pre-hearing telephonic conference.

B. **Witness Lists, Exhibits, and Evaluation Results:**

Unless [counsel for] the parties wish to otherwise stipulate, **the parties** must submit **and exchange their respective lists** of witnesses and copies of **their** exhibits, together with a table of contents, no less than five (5) **business** days in advance of the hearing. **In addition, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. It is recommended that the Hearing Officer establish a date certain for the exchange.**

I am enclosing a sample form on which the parties may list their witnesses. Please note that an address for witnesses is requested so that notice of the hearing can be sent to them. Please be advised that each party will only be able to call those individuals as witnesses at the hearing, **whom** they have specifically listed on their list of witnesses. Similarly, no documents or other exhibits shall be received into evidence at the hearing unless they have been timely exchanged with the other party. The deadlines for exchanging this information and the mechanics for doing so will be established during the pre-hearing conference call.

Should either party wish that subpoenas be issued, they must be forwarded to me for issuance (*See Attachment B-4*). Any subpoenas will be returned to you so that service may be accomplished.

C. **Open or Closed Hearing**

Mr. and Mrs. [parents] have the right to request that the special education due process hearing be closed (i.e., no members of the public will be permitted to attend), or open (i.e., members of the public may attend). The presumption is that the hearing will be closed. If the parent desires to have an open hearing, please advise me of this fact during the telephonic conference.

If either party needs to contact me by telephone, the party calling shall make arrangements to "conference in" the other party. In addition, if any correspondence is mailed or faxed to me, the sending party shall provide copies to the other party and the Arizona Department of Education/Exceptional Student Services.

Very truly yours,

Hearing Officer

Enclosures:

Agenda

List of Witnesses' Form

Subpoena(s)

cc: [Parent(s)]

[Special Education Director]

[Dispute Resolution Coordinator, Arizona Department of Education/ Exceptional Student Services]

ATTACHMENT C-2

HEARING AGENDA

[Student's Name] v. _____ *[Public Education Agency]*

[time, day and date of hearing)

[address where hearing will be held]

- I. Formal Call to Order
- II. Introductory Statement by Hearing Officer
 - A. Introduction of Hearing Officer
 - B. Statement of open or closed hearing
 - C. Introduction of participants for record
 - D. Purpose of the hearing
 - E. Explanation of hearing procedures
- III. Opening of Formal Testimony
 - A. Opening statement
 - 1. Petitioner
 - 2. Respondent
 - B. Presentation of Written Evidence and Testimony
 - 1. Written evidence
 - a. Petitioner
 - b. Respondent
 - 2. Testimony of witnesses
 - a. Petitioner
 - b. Respondent
 - c. Petitioner (rebuttal)
 - C. Closing Arguments
 - 1. Petitioner
 - 2. Respondent
 - 3. Petitioner
- IV. Closing Statements by Hearing Officer
 - A. Availability of record of hearing
 - B. Filing of post-hearing documents
 - C. Decision date
 - D. Procedures for appeal

ATTACHMENT C-3

The following information must be provided concerning the witnesses you intend to call at the impartial due process hearing. Only witnesses that are listed (and disclosed to the other party no less than five (5) business days prior to the hearing) will be allowed to testify at the hearing.

WITNESS LIST

RE: [Student's Name] v. [Public Education Agency]

Witnesses:

Name/Address

Summary of Testimony/Topic

1)

2)

3)

4)

5)

ATTACHMENT D

[Hearing Officer Letterhead]

[Date]

VIA FACSIMILE (or regular mail)

[Parent's representative]

[School/agency's legal counsel]

RE: *[Student's name v. District, Charter School or Agency]*

Dear _____ and _____:

This letter will serve to confirm that the parties have settled their dispute(s) and the petitioner(s) is withdrawing the request for due process. The due process hearing set to commence on *[day]*, *[date]* is vacated.

Both parties are advised that should factual circumstances change in the future and either party believes that a due process issue then exists, a request for due process may be initiated.

Sincerely,

Hearing Officer

cc: *[Parent(s)]*
[Special Education Director]
[Dispute Resolution Coordinator, Arizona Department of Education/Exceptional Student Services]

ATTACHMENT E

MODEL COMPLAINT FORM INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) MAY BE USED WHEN REQUESTING A DUE PROCESS HEARING

PLEASE TYPE OR PRINT

Date: _____

The **45** calendar days to complete a complaint will begin on the day the complaint is received by the school that is the subject of the complaint. The complaint must be in writing and may include supporting documents. A complaint may be submitted on this model form or in some other written format at the discretion of the parent(s) or their attorney.

REQUESTED INFORMATION

Complainant (Parent) or Attorney Name: _____

Complainant (Parent) or Attorney Address: _____

Complainant (Parent) or Attorney Phone: _____

The best time(s) to call during normal working hours (8-5 weekdays): _____

Alternate phone number(s) or preferred method of contact: _____

REQUIRED INFORMATION

Student's Name: _____

Student's Address: _____

Public Education Agency: _____

School Student Is Attending: _____

ATTACHMENT E (continued)

Provide a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem. Complainable issues under IDEA are any matter(s) relating to the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to a student.*

Provide a proposed resolution of the problem(s) to the extent known and available to you.*

Signature: _____

***Please attach additional sheets if needed. You have the right to receive a copy of the Procedural Safeguards Notice from the school at the time you submit your complaint.**

Additional questions concerning this form or due process rights may be addressed by contacting:

ARIZONA DEPARTMENT OF EDUCATION
EXCEPTIONAL STUDENT SERVICES
1535 WEST JEFFERSON STREET
PHOENIX, ARIZONA 85007
Phone (602) 542-3084 FAX (602) 364-0641

ATTACHMENT F

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT ["IDEA"] 20 USC §1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

In the Matter of	)	ACCEPTANCE OF SERVICE
	)	ADMINISTRATIVE SUBPOENA
Name of Petitioner,	)	FOR DUE PROCESS HEARING
Petitioner,)	
)	
vs.)	
)	
Name of Respondent,)	
Respondent)	
_____)	

Under the authority of the Individuals with Disabilities Education Act ["IDEA"] 20 USC §1415(h) and AAC R7-2-405(H):

I _____, hereby acknowledge that I have received your request that I waive service of a subpoena for my appearance in the above matter.

I further acknowledge that I have received copy of the Administrative Subpoena requiring my attendance at the hearing on Date: _____ at Time: _____ m. to be held at Location: _____.

I agree to save the cost of service of the subpoena by accepting service thereof as though it was served upon by a duly authorized Process Server, and by not requiring that I be served with judicial process in the manner required by the Arizona Rules of Civil Procedure.

DATED: _____

SIGNED: _____

ADDRESS: _____

SUBSCRIBED AND SWORN TO OR WITNESSED BEFORE ME THIS _____ DAY OF _____, 2001.

NOTARY PUBLIC

My Commission expires:

WITNESS

ATTACHMENT F

INDIVIDUALS WITH DISABILITIES EDUCATION ACT ["IDEA"] 20 USC §1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

In the Matter of	)	ADMINISTRATIVE SUBPOENA
	)	FOR DUE PROCESS HEARING
Name of Petitioner,	)	[SUBPOENA DUCES TECUM]
Petitioner,)	
)	
vs.)	
)	
Name of Respondent,)	
Respondent)	
_____)	

Under the authority of the Individuals with Disabilities Education Act ["IDEA"] 20 USC §1415(h) and AAC R7-2-405(H):

TO: **Name** _____
 Address _____
 Telephone _____

YOU ARE REQUESTED to produce documents or other tangible items for the Administrative Hearing in the above entitled matter, as follows:

DATE OF PRODUCTION: _____

TIME OF PRODUCTION: _____

PLACE OF PRODUCTION: _____

YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO COMPLY WITH THIS SUBPOENA WILL SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PERMITTED BY LAW.

EXECUTED this _____ day of _____, 2001

DUE PROCESS HEARING OFFICER

This Subpoena is at the request of: _____

ATTACHMENT F

INDIVIDUALS WITH DISABILITIES EDUCATION ACT ["IDEA"] 20 USC §1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

In the Matter of	)	ADMINISTRATIVE SUBPOENA
	)	FOR DUE PROCESS HEARING
Name of Petitioner,	)	[SUBPOENA DUCES TECUM]
Petitioner,)	
)	
vs.)	
)	
Name of Respondent,)	
Respondent)	
_____)	

Under the authority of the Individuals with Disabilities Education Act ["IDEA"] 20 USC §1415(h) and AAC R7-2-405(H):

TO: Name _____
Address _____
Telephone _____

☐ **YOU ARE COMMANDED to appear and give testimony at an Administrative Hearing in the above entitled matter at the time and place specified documents or other tangible items for the Administrative Hearing in the above entitled matter, as follows:**

☐ **YOU ARE REQUESTED to produce documents or other tangible items for the Administrative Hearing in the above entitled matter, as follows:**

DATE OF APPEARANCE/PRODUCTION: _____

TIME OF APPEARANCE/PRODUCTION: _____

PLACE OF APPEARANCE/PRODUCTION: _____

YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO COMPLY WITH THIS SUBPOENA WILL SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PERMITTED BY LAW.

EXECUTED this _____ day of _____, 2001

DUE PROCESS HEARING OFFICER

This Subpoena is at the request of: _____

ATTACHMENT F

INDIVIDUALS WITH DISABILITIES EDUCATION ACT ["IDEA"] 20 USC §1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

In the Matter of)
Name of Petitioner,)
Petitioner,)
vs.)
Name of Respondent,)
Respondent)
_____)

**ADMINISTRATIVE SUBPOENA
FOR DUE PROCESS HEARING**

Under the authority of the Individuals with Disabilities Education Act ["IDEA"] 20 USC §1415(h) and AAC R7-2-405(H):

TO: Name _____
Address _____
Telephone _____

YOU ARE COMMANDED to appear and give testimony at an Administrative Hearing in the above entitled matter at the time and place specified below:

DATE OF APPEARANCE: _____

TIME OF APPEARANCE: _____

PLACE OF APPEARANCE: _____

YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO COMPLY WITH THIS SUBPOENA WILL SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PERMITTED BY LAW.

EXECUTED this _____ day of _____, 2001

DUE PROCESS HEARING OFFICER

This Subpoena is at the request of: _____

ATTACHMENT G

DUE PROCESS HEARING

**TIMELINE EXTENSION
CONFIRMATION**

PUBLIC EDUCATION AGENCY: _____

PARENT'S NAME: _____

STUDENT'S NAME: _____

DATE ORIGINAL 45-DAY TIME LINE EXPIRES: _____

DATE EXTENSION EXPIRES: *(Must include specific date of expiration)* _____

PARTY REQUESTING EXTENSION: _____

REASONS FOR REQUEST: _____

HEARING OFFICER DECISION (if extension granted, specify exact reason for extension):

HEARING OFFICER: _____

ADDRESS: _____

PHONE: _____

Hearing Officer's Signature

Date

Notice Sent to:

☐ **Parent**

☐ **Public Education Agency**

☐ **Arizona Department of Education/Exceptional Student Services**

ATTACHMENT H

[Hearing Officer Letterhead]

[Date]

[Parent's representative]

[School/agency's legal counsel]

RE: *[student's name v. District, Charter School or Agency]*

Dear _____ and _____:

On [day], [date] from [time] to [time] a.m./p.m., the telephonic pre-hearing conference for the above referenced matter was conducted. Present were (1) [parent(s)], (2) [parent's lawyer or advocate], (3) [school/agency's representative] and (4) [school/agency's legal counsel].

The matters addressed and determined during the pre-hearing conference were as follows:

1. Legal Issues on Which Due Process is Requested: *[Specify all issues that are identified after confirming the wording of the issues. If the parties agree that certain issues are not in dispute, note this fact as well].*
2. Access to the Student's Educational Records: *[Address if relevant, otherwise delete].*
3. Estimate Number of Witnesses and Topic Summary of Testimony:
 - a. Petitioner: *[parent representative]* identified ____ individuals as witnesses:
 - i. [name; area of testimony]
 - ii. [name; area of testimony]
 - b. Respondent: *[school/agency]* identified ____ individuals as witnesses:
 - i. [name; area of testimony]
 - ii. [name; area of testimony]

ATTACHMENT H (continued)

[parent's representative]

[School/ agency legal counsel]

[date]

Page 2

4. Estimated Length of Hearing: [parent's representative] indicated that Petitioner's presentation of evidence was estimated as requiring ___ hours/days. [District's representative] indicated that Respondent's presentation of evidence was estimated as requiring ___ hours/days.
5. Hearing Date: The hearing will commence on [day], [date] at [time] o'clock and will be conducted at _____ which is located at [insert full street address], telephone ()____-_____. The hearing will run consecutively on [dates] until completed.
6. Procedural Issues: The conduct of the hearing will be as follows:
 - a. Order of presentation of evidence: Given the circumstances of this case, the [Petitioner/Respondent] will present their case first, followed by the [Respondent/Petitioner].
 - b. Burden of Proof: The school/agency has the burden of proof on [all issues/certain issues. If only certain issues, specify which party bears the burden of proof on each issue.]
 - c. Representation of Parent(s)/Legal Guardian: The parents have been advised of low cost or free legal services by the school or agency. The parents will be represented by lawyer/advocate_____.
 - d. Open/Closed Hearing: Petitioner has requested that the hearing be [open/closed].
 - e. Presence of child: Petitioner has requested that the child [will/will not] be present during the hearing.
 - f. Record of the Proceedings: The school/agency is responsible for preparing a verbatim record of the proceedings.
 - g. Pre-hearing Memorandum: The parties will submit a written pre-hearing memorandum setting forth the evidence they believe they will introduce to support each issue that is to be considered in the due process hearing and/or any legal authority, (i.e., statutory provision, regulation, decisional law and/or agency opinion letters, that is relied upon). These memorandums are due to the hearing officer no later than 5:00 p.m. the day before the hearing and are to be faxed to my attention at [telefacsimile number]. [Note: If parents are not represented, this should not be made a requirement] .

ATTACHMENT H (continued)

[Parent's representative]

[School/ agency legal counsel]

[date]

Page 3

7. List of Witnesses and Exhibits Book: The list of witnesses and exhibits that are to be used in the hearing must be exchanged between the parties no later than five (5) **business** days before the start of the due process hearing. The deadline is [day], [date] at 5:00 p.m. Representatives for the parties are to confer and submit a joint exhibit book (three copies - one for each side and one for the hearing officer) as to those documents, which either side intends to use at the hearing and for which no objection is stated. Proposed exhibits drawing objections are to be placed in the back of the exhibit book and objections will be taken up at the hearing. Counsel for the school/agency will mail a copy of the joint exhibit book and a copy of both parties' list of witnesses to the hearing officer.

If either party has any questions concerning any of the foregoing points, please call me immediately so that any uncertainty, confusion or ambiguity that might exist can be promptly addressed. You will both be given the opportunity to state any objection, correction or supplementation of this letter at the outset of the due process hearing.

Very truly yours,

Hearing Officer

cc: [parent(s)]

[Special Education Director]

[Dispute Resolution Coordinator, Arizona Department of Education/Exceptional Student Services]

ATTACHMENT I

[* * * sample of cover page with index of names * * *]

ARIZONA DEPARTMENT OF EDUCATION

[Name of Hearing Officer], Due Process Hearing Officer
[address]
[phone/fax numbers]

In the Matter of	)	IMPARTIAL DUE PROCESS
)	
[Name of student] ("Student"),	)	HEARING DECISION AND ORDER
)	
Petitioner,	)	Hearing Dates: [insert dates]
)	
v.	)	Held at: [insert location, with address]
)	
[Name of public education)	
agency] ("District"),)	
)	
Respondent.)	
)	

Parent: [insert name and address of parent]

Counsel for Parent: [insert name and address of parent's counsel]

Counsel for District: [insert name and address of District's counsel]

An index of names is attached hereto for the benefit of the parties. The index will permit the parties to identify specific witnesses and other relevant persons. The index is designed to be detached before release of this Decision and Order as a public record.

ATTACHMENT I (continued)

INDEX OF NAMES

[name of student v. name of public education agency]

Special Education Director	[insert name]
Special Education Teacher	[insert name]
School Psychologist	[insert name]
Regular Education Teacher	[insert name]
Principal	[insert name]
LEA Representative	[insert name]
Speech/Language Pathologist	[insert name]
Occupational Therapist	[insert name]
Physical Therapist	[insert name]
Private Psychologist	[insert name]

ATTACHMENT J

HOW TO WRITE FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

INTRODUCTION

A. The Ideal

Administrative decisions should be written so that they are understandable to everyone who is likely to read them. This goal assumes added importance when you consider that of the people who will read your decision, the least sophisticated may be most significantly affected by it. This consideration notwithstanding, you can and should meet the standard of writing a comprehensible decision without any compromise of scholarship.

B. Suggestions pertinent to the Writing of Facts and Conclusions

1. Strive to be concise, as opposed to simply brief.
2. Short sentences are preferable. They demonstrate willingness and ability of the writer to:
 - (a) Make a straightforward statement;
 - (b) Elicit sufficient evidence to support a clear finding of fact; and
 - (c) Conduct a thorough analysis so that a clear conclusion may be drawn.
3. Construct an outline, especially in complex cases. In the long run, preparing an outline probably saves time. An outline is a good organizational tool, and its effective use will produce a concise and coherent decision. After outlining your proposed findings and conclusions, you can review your findings in light of your proposed conclusions. You will be able to more tightly connect both.
4. It is very easy to inadvertently write a conclusion of law, or conclusionary language, into your findings of fact. The reverse is also true. Careful proofreading is usually the best remedy for this and other errors.
5. If you address procedural problems in your decision in addition to dealing with the merits, set forth findings relating to the procedural issues first, followed by findings on the merits. This format should also be followed in writing conclusions.

ATTACHMENT J (continued)

II.

WRITING FINDINGS OF FACT

A. The most comprehensible way to set forth findings of fact is in chronological order.

B. The Importance of the Record

1. Adherence to the record is imperative. As a decision— maker, you live or die by your record, since it is the basis for your findings, which support your conclusions, which, in turn, dictate your order.
2. Each finding of fact should be supported by competent evidence of record. In those instances when your findings thus supported do not support a conclusion, you will have to lay a foundation for a conclusion by resorting to related evidence on the record and by drawing logical inferences therefrom. When you “fill gaps” in this manner, consider using the following procedure:
 - (a) State that you are without evidence which would, by itself, support a finding of fact;
 - (b) Set forth the evidence in the record which you will use as a basis for drawing the inference;
 - (c) Reach a conclusion as a result of your analysis of the associated facts or your inferences drawn therefrom. This last step would appear in the “conclusions” portion of your decision.
 - (d) Avoid relying on statements that merely summarize the testimony adduced at hearing; instead the writer should set forth concrete factual findings.

Incorrect: The psychologist testified that the student’s high degree of inattentiveness and hyperactivity was interfering with his ability to concentrate on his school work. The teacher’s aide testified that the student had no difficulty concentrating on his school work.

Correct: Having weighed the conflicting evidence, the Hearing Officer finds as a matter of fact that the student’s high degree of inattentiveness and hyperactivity interfered with his ability to concentrate on his school work. (Testimony of School Psychologist).

3. Occasionally, an effective use of the record will consist of setting forth verbatim excerpts from the testimony or other evidence.

ATTACHMENT J (continued)

C. Evaluating Conflicting Evidence

When testimony or other evidence is contradictory on a critical point of a factual nature, you must resolve the conflict. Sometimes the most coherent method of introducing the problem is to set forth the contentions of the parties. When this is done, care should be taken to state the contentions precisely as the parties have. If you can resolve the conflict by reference to findings you have already made which are consonant with one party's contention, your resolution of the problem should be set forth as a finding. This is preferable to merely stating that "The evidence was in conflict on this point," or breaking off your treatment of the issue after having set forth the parties' contentions, necessitating your return to the problem later in your conclusions.

ATTACHMENT J (continued)

III.

WRITING CONCLUSIONS OF LAW

A. Format

First identify the pertinent statutes and regulations. In succeeding paragraphs, show the proper application of the rules to the facts of the case at hand. If your decision will turn on a legal principle or concept, you should trace the principle's definition and development through administrative and judicial decisions and then show its application to the present facts.

B. Relationship to Findings of Fact

If, in your findings, you have dealt with multiple issues, address the issues in your conclusions in the same sequence as you did in your findings.

C. Evaluating Conflicting Evidence

1. In General

If brief reference to other findings cannot be made which would enable you to resolve conflicting evidence in your findings (see section II. C. above), and it will be necessary to explain at some length why you accord credibility to one party's testimony rather than to the other's, the explanation can be set forth as a conclusion. Your rationale in these instances may be the result of your observation of the witnesses, the logical persuasiveness of their testimony, or the extent to which each witness' testimony coincides with other competent evidence.

2. Inconsistent Statements by a Witness

When a witness has made inconsistent statements, explain why you find one statement more worthy of belief than the other. Your rationale may be that you choose to believe the statement made at the time most proximate to the events germane to the issue, or the statement made when the witness was unaware of any adverse consequences the statement might have.

D. Special Considerations

In cases involving hearsay evidence, official notice, burden of proof, or any legal principle requiring unique treatment, first define the principle or concept, explain its application, and show how it affects the case at hand.

ATTACHMENT J (continued)

E. Writing Style

1. Use a numbered format for your findings and conclusions (most administrative decisions are required to be written with numbered findings and conclusions). For the sake of clarity or emphasis, it is useful to refer to a previous paragraph as opposed to reiterating the entire finding or conclusion.
2. Minimize use of the terms “clearly,” “it seems that,” or words of similar import. If you find yourself about to write in that manner, ask yourself “Why is it clear?” or “Why does it seem that way?” and write the answers to those questions in your decision.
3. Minimize use of the subjunctive mood, such as “We would note the following” or “The undersigned would conclude.” Direct statements, such as “The undersigned concludes” make a stronger impression.

ATTACHMENT J (continued)

IV.

WORDING THE ORDER

The Order is a simple, clear statement of the disposition of the case. It is here that you order the parties to take the action you have determined is appropriate. The importance of writing a specific order cannot be overemphasized. If the case is appealed, you do not want to run the risk that your order will be misinterpreted or rendered unenforceable. It is not necessary or desirable to reiterate your conclusions in the order; however, if, for example, you have imposed a timeline for the parties to act upon, be sure and identify that timeline in the order. Avoid leaving the time frame open—ended, e.g., “Within a reasonable time.”

ATTACHMENT K

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT ["IDEA"] 20 USC § 1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

In the Matter of) **CERTIFICATION OF RECORD**
(Petitioner Name),)
Petitioner,)
v.)
(Respondent Name),)
Respondent)
_____)

I, _____, Impartial Due Process Hearing Officer in this matter, DO
HEREBY CERTIFY that the attached Record of Proceeding and attached Index of Exhibits
itemizes the entire record in the above entitled matter as of this date, consisting of all letters,
pleadings, orders, exhibits, reporters' transcripts and depositions.

I FURTHER CERTIFY that the documents and things forwarded herewith are either the
original or a true copy of the original documents submitted in this matter.

EXECUTED this _____ day of _____, 2001

DUE PROCESS HEARING OFFICER

ATTACHMENT K (continued)

MATTER OF

AND

INDEX OF EXHIBITS

[illegible]

ATTACHMENT K (continued)

MATTER OF

AND

RECORD OF PROCEEDING

[illegible]